

**James Madison to Thomas Jefferson, January 15, 1823. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.**

**TO THOMAS JEFFERSON. MAD. MSS.**

Montpellier, Jan'y 15, 1823

Dear Sir —I have duly received yours of the 6th, with the letters of Mr. Cabell, Mr. Gerry, and Judge Johnson. The letter from Mr. C. proposing an Extra Meeting of the Visitors, & referred to in yours was not sent, and of course is not among those returned.

The friends of the University in the Assembly seem to have a delicate task on their hands. They have the best means of knowing what is best to be done, and I have entire confidence in their judgment as well as their good intentions. The idea of Mr. Cabell, if successful will close the business handsomely. One of the most popular objections to the Institution, I find is the expence added by what is called the ornamental style of the Architecture. Were this additional expence as great as is supposed, the objection ought the less to be regarded as it is short of the sum saved to the public by the private subscribers who approve of such an application of their subscriptions. I shall not fail to join you on receiving the expected notice from Mr. Cabell, if the weather & my health will permit; but I am persuaded it will be a supernumerary attendance, if the money be obtained, and the sole question be on its application to the new Edifice.

The two letters from Mr. Gerry are valuable documents on a subject that will fill some interesting pages in our history. The disposition of a party among us to find a cause of

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rupture with France, and to kindle a popular flame for the occasion, will go to posterity with too many proofs to leave a doubt with them. I have not looked over Mr. Gerry's letters to me which are very numerous, but may be of dates not connected with the period in question.<sup>1</sup> No resort has been had to them for materials

<sup>1</sup> On February 14, 1815, James T. Austin applied to Madison for the appointment of Comptroller of the Treasury.— *Mad. MSS.* Austin's *Life of Elbridge Gerry* appeared in 1828-'29. January 22, 1832, he wrote to Madison for information concerning Gerry's services in the Constitutional Convention for use in a revised edition of his book, which, however, never was published. Elbridge Gerry, Jr., wrote to Madison December 4, 1814, saying his father had impoverished himself and his family by his public services, and asked for an office.— *Mad. MSS.*

for his biography, perhaps from the idea that his correspondence with me may contain nothing of importance or possibly from a displeasure in the family at my disappointing the expectations of two of them. Mr. Austen the son in law, was anxious to be made Comptroller instead of Anderson, who had been a Revolutionary officer, a Judge in Tennessee, and a Senator from that State in Congress; and with equal pretensions only had in his scale the turning weight of being from the West, which considers itself without a fair proportion of National appointments. Mr. Austen I believe a man of very respectable talents, & had erroneously inferred from Mr. Gerry's communications, that I was under a pledge to name him for the vacancy when

it should happen. Thinking himself thus doubly entitled to the office, his alienation has been the more decided. With every predisposition in favor of young Gerry, he was represented to me from the most friendly quarters as such a dolt, that if his youth could have been got over, it was impossible to prefer him to the place (in the Customs) to which he aspired. I believe that some peculiarities in his manner led to an exaggeration of his deficiencies and that he acquits himself well eno' in the subordinate place he now holds.

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Judge Johnson's letter was well entitled to the perusal you recommended. I am glad you have put him in possession of such just views of the course that ought to be pursued by the Court in delivering its opinions.<sup>1</sup> I have taken frequent occasions to impress the necessity of the seriatim mode; but the contrary practice is too deeply rooted to be changed without the injunction of a law, or some very cogent manifestation of the public discontent. I have long thought with the Judge also that the Supreme Court ought to be relieved from its circuit duties, by some such organization as he suggests. The necessity of it is now rendered obvious by the impossibility, in the same individual, of being a circuit Judge in Missouri &c, and a Judge of the supreme Court at the seat of Government. He is under a mistake in charging, on the Executive

<sup>1</sup> See Jefferson's letter in *Writings* (P. L. Ford), xii., p. 274. Judge William Johnson wrote to Jefferson Dec. 10, 1822, from Charleston: "When I was on our State bench I was accustomed to delivering seriatim opinions in our appellate Court, and was not a little surprised to find our Chief-Justice in the Supreme Court delivering all the opinions in cases in which he sat, even in some Instances when contrary to his own Judgment & vote. But I remonstrated in vain; the answer was, he is willing to take the Trouble, & it is a Mark of Respect to him. I soon, however, found out the real cause. Cushing was incompetent, Chase could not be got to think or write, Patterson was a slow man & willingly declined the Trouble, & the other two Judges [Marshall and Bushrod Washington] you know are commonly estimated as one Judge." He had succeeded in getting the court to appoint some one to deliver the opinion of the majority and leave it to the minority's discretion to record its opinion or not. The real trouble was that the court was too numerous. "Among seven men," he said, "you will always find at least one intriguer, and probably more than one who may be acted upon only by intrigue." Four judges were enough. He would have the country divided into a Southern, a Western, a Middle, and an Eastern division and a judge appointed from each.— *Jefferson MSS.*

at least, an inattention to this point. Before I left Washington I recommended to Congress the importance of establishing the Supreme Court at the seat of Govt., which would at

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once enable the Judges to go thro' the business, & to qualify themselves by the necessary studies for doing so, with justice to themselves & credit to the Nation. The reduction of the number of Judges would also be an improvement & might be conveniently effected in the way pointed out. It cannot be denied that there are advantages in uniting the local & general functions in the same

persons if permitted by the extent of the Country. But if this were ever the case, our expanding settlements put an end to it. The organization of the Judiciary Department over the extent which a Federal system can reach involves peculiar difficulties. There is scarcely a limit to the distance which Turnpikes & steamboats may, at the public expence, convey the members of the Govt. & distribute the laws. But the delays & expence of suits brought from the extremities of the Empire, must be a severe burden on individuals. And in proportion as this is diminished by giving to local Tribunals a final jurisdiction, the evil is incurred of destroying the uniformity of the law.

I hope you will find an occasion for correcting the error of the Judge in supposing that I am at work on the same ground as will be occupied by his historical view of parties, and for *animating* him to the completion of what he has begun on that subject. Nothing less than full-length likenesses of the two great parties which have figured in the National politics will sufficiently expose the deceptive colours under which they have been painted. It appears that he has already collected materials, & I infer from your acct. of his biography of Green which I have not yet seen, that he is capable of making the proper use of them.<sup>1</sup> A good work on the side of truth, from his pen will be an apt & effective antidote to that of his Colleague which has been poisoning the Public mind, & gaining a passport to posterity.

<sup>1</sup> *The Life and Correspondence of Nathaniel Greene*, Charleston, 1822.

I was afraid the Doctr. was too sanguine in promising so early a cure of the fracture in your arm. The milder weather soon to be looked for, will doubtless favor the vis medicatrix which, nature employs in repairing the injuries done her.

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Health & every happiness.